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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,814

09/30/2005

Karl Nideborn

CU-4433 BWH

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26530 7590 01/27/2009  
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EXAMINER

FREEMAN, JOHN D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/551,814	<b>Applicant(s)</b> NIDEBORN ET AL.	
	<b>Examiner</b> John Freeman	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claim 31 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the method claim requires the presence of food or liquid, while the previous claims relate to a material which can be used for anything, including packaging objects other than food.

2.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 31 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

3. Applicant is advised that should claims 5 be found allowable, claim 19 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

4. Claim 24 is objected to because of the following informalities: the claim recites "the third layer" but Applicant appears to limit the "second layer". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-4, 6-7, 10-11, 13-15, 19-20, and 22-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Laplante et al. (US 2002/0002238).

7. Regarding claims 1-4, 7, 19-20, 22-23, and 28-29:

8. Laplante et al. (hereafter Laplante) disclose packaging material [0003] for food [0023]. The material comprises multiple layers, including an oxygen barrier layer and structural layers [0024]. The oxygen barrier comprises the antioxidant vitamin E (claim 26). Other layers include structural layers made of polyvinyl chloride [0081]. Given that PVC is the same material as used for the present heat resistance layer, the examiner takes the position the structural layer is inherently heat resistant. Laplante teaches the use of transparent films [0117]. Laplante clearly teaches a method of forming a first layer having the antioxidant, and further forming a heat-resistant layer thereon as presently claimed.

9. The antioxidant may be used from 0.0-1% by weight, or possibly higher [0074]. Converting that to units used by Applicants, one arrives at over 10,100 ppm of vitamin E. (1% equates to 1g for every 99g of polymer, which further resolves to 10,101g for every 1,000,000g).

10. Regarding claims 6, 11, and 30:

11. The material can comprise additional oxygen barrier layers of EVOH and PVDC [0085].

12. Regarding claims 10 and 24:

13. Given the polymers described by Laplante are the same as those described by Applicant, the examiner takes the position that they would constitute "high temperature melting polymers" as presently claimed.

14. Regarding claims 25-27:

15. Laplante uses adhesive layers to join the other layers [0017].

16. Regarding claim 13:

17. Thicknesses vary depending on the end packaging product, including thicknesses of 100 µm to 1000µm and 5 µm to 250 µm [0022].

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18. Regarding claim 14:

19. Given the polymers described by Laplante are the same as those described by Applicant, the examiner takes the position that they are “sealable” as presently claimed.

20. Regarding claim 14:

21. The packaging can be used for beer and sparkling wine [0019].

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 5, 8, 9, 12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laplante et al. (US 2002/0002238).

24. Laplante discloses packaging material as previously described.

25. Regarding claims 5 and 9:

26. Laplante teaches the use of “at least one structural layer” in the packaging, and specifically mentions a material having two structural layers on either side of a the oxygen barrier [0081]. Structural polymers include polyolefins and PVC [0081].

27. Regarding claim 12:

28. Laplante uses adhesive layers to join the other layers [0017].

29. Regarding claims 8 and 21:

30. The oxygen barrier polymer comprises polyethylene terephthalate [0015]. Given that Laplante does not specify that crystallinity of the PET, one of ordinary skill would recognize that any PET that does not adversely affect the oxygen barrier properties would be suitable. As such, at the time of the invention, it would have been obvious to one of ordinary skill in the art to vary the crystallinity of the PET, including using amorphous PET, to arrive at an oxygen barrier-containing packaging material.

***Claim Rejections - 35 USC § 112***

31. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

32. Claims 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

33. Claim 8 recites the polymer material comprises "polyolefin and/or polyester based polymers" selected from the given group. However, the group contains PVC, PC, "and/or other layer", which are not polyolefin and/or polyester based polymers.

***Conclusion***

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Freeman whose telephone number is (571)270-3469. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Freeman  
Examiner  
Art Unit 1794

/John Freeman/  
Examiner, Art Unit 1794

/Callie E. Shosho/  
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